

REMARKS

The portions of the Specification objected to by the Examiner have been amended. In particular, the paragraph beginning at page 6, line 28 has been amended to replace “the in” by “in the”; the paragraph beginning at page 9, line 14 has been amended to fill in the blank with the proper U.S. Serial Number (10/688,320) for the patent application “MULTIPLE-CROOK MALE TOUCH FASTENER ELEMENTS” that was incorporated by reference; and the paragraph beginning at page 21, line 8 has been amended to fill in the blank with the proper U.S. Serial Number (10/688,033) for the patent application “WOVEN TOUCH FASTENER PRODUCTS” that was also incorporated by reference. In the Office Action at page 2, the Examiner indicates that “MULTIPLE-CROOK MALE TOUCH FASTENER ELEMENTS” is U.S. Patent Application Serial Number 10/688,031. This is not correct, as the serial number for this application is correctly stated above (10/688,320).

Applicants acknowledge that the Examiner has found allowable subject matter in claims 4-6, 21-23 and 38-40. However, Applicants believe that all pending claims as currently presented are allowable, and further review is requested in light of the following remarks.

Claims 1-3, 7-20, 24-37 and 41-54 have been rejected as being obvious over Kingsford, U.S. Patent No. 6,851,161 (“Kingsford”) in view of Provost, U.S. Patent No. 4,984,339 (“Provost”).

Applicants disclose that their closures are “particularly useful for applications requiring high closure strength and low closure thickness” and that such high closure strengths are “commonly associated with thicker, more bulky woven fastener tapes” (page 5, 2nd paragraph). Thus, Applicants disclosure generally enables touch fasteners that are both low profile and exhibit high closure strength, e.g., suitable for use on non-disposable garments, outerwear, footwear and luggage. For example, many of the closures exhibit high initial peel resistance, as measured on new, un-cycled specimens, and/or high final peel resistance, as measured on samples previously cycled through 1000 disengagements. Many of the closures also exhibit high initial shear resistance.

Independent claims 1, 19 and 37 are each generally directed to a low profile releasable touch fastener, while independent claim 54 is directed to a method of releasably fastening two flexible surfaces together.

Claims 1 and 54 require, in pertinent part, that the touch fastener have a loop component and a hook component configured to releasably engage female fastener elements of the loop component such that the fastener has an engaged thickness of less than about 0.11 inch and a final peel resistance of at least 0.3 pound per inch of closure width.

The Examiner concedes that Kingsford fails to disclose "that the touch fastener has hook and loop components provided with a final peel resistance of at least 0.3 pounds per inch of closure width" (page 3 of the Office Action). However, the Examiner contends that Provost provides the missing component, i.e., a hook that provides a final peel resistance of at least 0.3 pounds per inch of closure width. The Examiner states at the top of page 4 of the Office Action that

it would have been obvious to one having ordinary skill in the art at the time the invention was made to have a releasable touch fastener provided with at least 0.3 pounds per inch of closure width as taught by Provost in the fastener disclosed by Kingsford since hooks having at least 0.3 pounds per inch of closure width are well known in the art as taught by Provost.

Applicants respectfully submit that they are not asserting that low profile closures are new, nor are they asserting that closures exhibiting a high final peel resistance are new. Rather, Applicants are asserting that low profile closures having an engaged thickness of less than about 0.11 inch in combination with a final peel resistance of at least 0.3 pound per inch of closure width are new and non-obvious, particularly over Kingsford in view of Provost. Regarding the Examiner's statement that "*hooks* having at least 0.3 pounds per inch of closure width are well know in the art as taught by Provost" (emphasis added), Applicants respectfully submit that peel resistance is a function of both the loop component and the hook component, not just of the 'hook'. Just because Provost's hooks can provide high peel and shear resistance in certain configurations does not mean that applying Provost's hooks to Kingsford's low profile would result in a low profile closure exhibiting high peel and/or shear resistance. Applicants note that Provost does not even describe the type of loop material used in his closures, nor is it clear that

the peel data disclosed by Provost corresponds to either Initial Peel Resistance or Final Peel Resistance, as used in Applicants' claims. It would appear that Table III of Provost is simply used to show relative rankings of how particular hooks perform when used with a certain type of loop material. Importantly, Provost does not disclose or suggest that his hooks can be used as part of a low profile closure, and discloses nothing of overall closure thickness. Kingsford discloses a thin rib-and-groove sealing closure with hook and loop fastener elements. Kingsford describes that using the hook and loop fasteners elements in combination with a seal can be advantageous in that engagement of the hook and loop elements reduce the likelihood of unwanted opening of the closure (see, e.g., col. 4, lines 15-33), but Kingsford does not disclose that they need to form a particularly strong closure to perform their function, and discloses nothing of peel strength.

Applicants respectfully submit that the Examiner has simply gone out to the prior art and found a low profile closure (Kingsford) and a hook that can provide high shear and peel resistance when mated with certain loop materials (Provost), asserting that since they are both known, it would have been obvious to combine the two. However, obviousness cannot be established by simply stitching together independent pieces of prior art using the Applicant's application as a template (see, e.g., Interconnect Planning Corp. v. Feil, 774 F.2d 1132, Loctite Corp. v. Ultraseal Ltd., 781 F.2d 861 and In re Fine, 837 F.2d 1071). Applicants' claims are not disjointed lists of elements, but present an invention that must be considered *as a whole*. (see, e.g., MPEP 2141.02 and Stratoflex, Inc. v. Aeroquip, 713 F.2d 1530). Such a principle is plainly evident in this case, as while the cited references include a low-profile fastener and a high peel fastener, the combination of the two cited references creates absolutely no understanding of how one of ordinary skill might go about creating a fastener that is both thin and of such high peel strength, particularly as high peel strength is generally associated with bulky fasteners. Rather, it is Applicants' teachings that have enabled such an invention. Applicants therefore respectfully submit that claims 1 and 54, and all claims that depend therefrom, are non-obvious over Kingsford in view of Provost and request withdrawal of the rejection.

Claim 19 requires, in pertinent part, that the touch fastener have a loop component and a hook component configured to releasably engage female fastener elements of the loop component such that the fastener has an engaged thickness of less than about 0.11 inch and an

initial peel resistance of at least 0.5 pounds per inch of closure width. While claim 1 featured a combination of thinness and *final* peel resistance, claim 19 features a combination of thinness and *initial* peel resistance.

Regarding claim 19, the Examiner contends at page 5 of the Office Action that a combination of rejections of claims 1 and claim 2 (claim 2 depending from claim 1 and featuring initial peel resistance) will result in the limitations of claim 19. It is clear from even the form of this rejection that the Examiner is not considering the claimed invention holistically. Rather, the Examiner is attempting to reconstruct the claimed invention by stitching together independent pieces of prior art using Applicants' claims as a roadmap. As discussed above, this is an improper view of the test of patentability. Applicants respectfully submit that claim 19 and its dependent claims are non-obvious over Kingsford in view of Provost for at least the reason that the cited combination of references neither suggests nor enables a low profile closure having an engaged thickness of less than about 0.11 inch in combination with an initial peel resistance of at least 0.5 pounds per inch of closure width.

Claim 37 requires, in pertinent part, that the touch fastener have a loop component and a hook component configured to releasably engage female fastener elements of the loop component such that the touch fastener has an engaged thickness of less than about 0.11 inch and an initial *shear* resistance of at least 10 pounds per square inch.

Regarding claim 37, the Examiner contends at page 6 of the Office Action that a combination of rejections of claims 1 and 3 (claim 3 requiring that "the hook and loop components are so configured to provide an initial shear resistance of at least 10 pounds per square inch") will result in the limitations of claim 37. Again, it is clear from the form of this rejection that the Examiner is not considering the claimed invention as a whole. Rather, the Examiner has improperly stitched together independent pieces of prior art using the Applicant's application as a guide. Applicants submit that claim 37 and its dependent claims are non-obvious over Kingsford in view of Provost for at least the reason that the cited combination of references neither suggests nor enables a low profile closure having an engaged thickness of less than about 0.11 inch in combination with an initial shear resistance of at least 10 pounds per square inch.

Applicants : Nancy J. Tolan et al.
Serial No. : 10/688,032
Filed : October 15, 2003
Page : 7 of 7

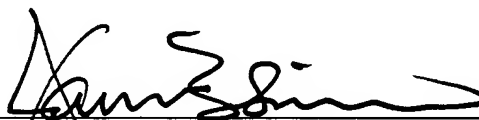
Attorney Docket No.: 05918-322001 / VGCP No. 5080

Applicants respectfully submit that independent claims 1, 19, 37 and 54, and all claims depending therefrom, are non-obvious over Kingsford in view of Provost for at least the reasons outlined above and respectfully request withdrawal of all rejections.

Enclosed is a check for \$120.00 for the Petition for Extension of Time fee. Please apply any other charges or credits to deposit account 06-1050, referencing Attorney Docket No. 05918-322001.

Respectfully submitted,

Date: September 6, 2005



James W. Babineau
Reg. No. 42,276

Fish & Richardson P.C.
225 Franklin Street
Boston, MA 02110
Telephone: (617) 542-5070
Facsimile: (617) 542-8906